

**REMARKS**

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Claims 1-38 are pending, with claims 3, 17 and 21 amended by the present amendment.

In the Office Action, claim 3, 17 and 21 were rejected under 35 U.S.C. § 112, second paragraph, claims 1-5, 7, 9-11, 13, 22, 24, 26, 27 and 31 were rejected under 35 U.S.C. § 102(e) as being anticipated by Edmond et al (U.S. Patent 6,906,352, hereinafter Edmond); claims 12, 19, 23 and 37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Edmond in view of Chua (JP 2002-16284), Sugiura (U.S. Patent 6,015,979), Suzuki (JP 2002-16284) and Tanizawa (U.S. Patent 6,657,234), respectively; claims 6, 8, 14-16, 18, 20, 25, 28-30, 32, and 33 were indicated as containing allowable subject matter; and claims 34-36 and 38 were allowed.

Applicant acknowledges with appreciation the indication of allowable subject matter.

Claims 3, 17 and 21 are amended in response to the rejection under 35 U.S.C. § 112, second paragraph. No new matter is added.

Briefly recapitulating, claim 1 is directed to a nitride semiconductor light emitting device that includes, *inter alia*, a first electrode contact layer formed above the super lattice structure layer.

The Official Action asserts that Edmond's lowermost layer (76) of the active layer corresponds to Applicant's first electrode contact layer. Applicant traverses and notes that Edmond merely teaches that an ohmic contact 70 is formed below the n-type substrate 50 and super lattice layer (56). (See Fig 13, col. 15, lines 33-35).

Furthermore, regarding to claims 1 and 24, Applicant submits that Edmond fails to disclose or suggest “a first cluster layer formed above the first electrode contact layer; a first In-containing nitride gallium layer formed above the first cluster layer; a second cluster layer formed above the first In-containing nitride gallium layer.” The Official Action asserts that Edmond discloses a first/a second cluster layer may be formed above the first electrode contact layer. Applicant traverses and notes that Edmond merely discloses that discrete crystal portion 28 is formed below a first n-type cladding layer 11, active layer 13 and a second n-type cladding layer 12.

MPEP § 2131 notes that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See also MPEP § 2131.02. “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Because Edmond does not disclose or suggest all of the features recited in claims 1 and 24, Edmond does not anticipate the invention recited in claims 1 and 24, and all claims depending therefrom.

Regarding to claim 37, Applicant submits that Tanizawa does not cure the deficiencies of Edmond because Tanizawa fails to disclose an n-type second electrode contact layer formed above the p-type nitride semiconductor layer. That is, Tanizawa merely discloses an n-type contact layer 4 formed on an undoped GaN layer 3. N-type contact layer 4 of Tanizawa is not equivalent to Applicant’s claimed n-type second electrode contact layer formed above the p-type nitride semiconductor layer.

Reply to Office Action of January 4, 2008

As none of the cited art, individually or in combination, discloses or suggests at least the above-noted features of independent claim 37, Applicant submits the inventions defined by claim 37, and all claims depending therefrom, are not rendered obvious by the asserted references for at least the reasons stated above.<sup>1</sup>

Conclusion

In view of the above remarks, it is believed that claims are allowable.

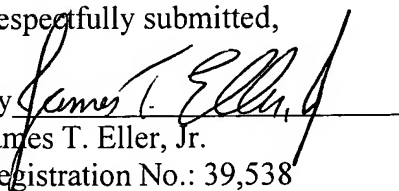
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Michael E. Monaco Reg. No. 52,041 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: **APR - 2 2008**

Respectfully submitted,

By

  
James T. Eller, Jr.

Registration No.: 39,538

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant

---

<sup>1</sup> MPEP § 2142 "...the prior art reference (or references when combined) must teach or suggest all the claim limitations.